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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 Ilsa Saravia, as next friend for A.H., a minor, and Case No.:  
15 on her own behalf,

16 Petitioner/Plaintiff,

17 v.

18 Jefferson B. Sessions, Attorney General of the  
19 United States; James McHenry, Acting Director  
20 of the United States Executive Office for  
21 Immigration Review; Thomas E. Price, M.D.,  
22 Secretary of the Department of Health and  
23 Human Services of the United States; Steven  
24 Wagner, Acting Assistant Secretary of the  
25 Administration for Children and Families; Scott  
26 Lloyd, Director of the Office of Refugee  
27 Resettlement of the United States; Elicia Smith,  
Federal Field Specialist of the Office of Refugee  
Resettlement of the United States; and Brent  
Cardall, Chief Probation Officer of Yolo County,  
in their official capacities,

Respondents/Defendants.

**PETITION FOR WRIT OF HABEAS  
CORPUS AND COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

**IMMIGRATION ACTION**

## INTRODUCTION

1. Petitioner and Plaintiff Ilsa Saravia (“Plaintiff”) brings this action on behalf of herself and son, A.H., a minor who is being wrongfully incarcerated in a secure juvenile facility by Defendants/Respondents (“Defendants”). A.H. is a citizen of Honduras who escaped abuse by his father and entered the United States in 2015 as an unaccompanied alien child. After a brief stint in the custody of the United States Office of Refugee Resettlement (“ORR”), he was released into Plaintiff’s custody under an agreement between ORR and Plaintiff, and he has been living with Plaintiff in New York State under that agreement for the last two years. He is eligible to receive Special Immigrant Juvenile (“SIJ”) status, which would put him on a lawful path to citizenship, and he has undertaken to comply with all the requirements to obtain SIJ status.

2. On June 12, 2017, Immigration and Customs Enforcement (“ICE”) agents arrested A.H. outside his home, refused his repeated requests to contact his attorney, and interrogated him without counsel present. On June 13, without notice to A.H.’s mother or his counsel and without explaining to A.H. what was happening to him, two federal agents escorted A.H. by airplane first to Los Angeles and then to Sacramento, California, where they left him in ORR custody in a secure juvenile facility, the Yolo County Juvenile Detention Facility (“Yolo”).

3. A.H. has been arrested without cause, transported across the country, and placed in a secure holding cell 2,500 miles from his mother and guardian without any notice or opportunity be heard regarding the government’s purported justification for his detention, all in violation of his constitutional rights, his statutory rights, and the provisions of a federal court consent decree that is binding on Defendants.

4. Defendants’ actions removed A.H. from his home, community, and long term legal counsel just weeks before critical court hearings whose outcomes will determine A.H.’s ability to remain in his adopted country with his family. Defendants’ violations of A.H.’s constitutional and statutory rights require the prompt intervention of this Court.

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7. Plaintiff Saravia, acting as next friend of A.H., respectfully applies to this Court for a writ of habeas corpus ordering A.H.'s immediate release to Plaintiff's custody, or, in the alternative, to ORR custody in the vicinity of A.H.'s legal counsel and court hearings pending a hearing before a neutral decision-maker at which A.H. and his counsel can test the evidence against him and submit A.H.'s position on any purported justification for his detention.

8. This Court has subject matter jurisdiction over a writ of habeas corpus pursuant to Art. I, § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 2241, 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1361. This action arises under the Due Process Clause of the Fifth Amendment of the United States Constitution, the Immigration and Nationality Act (“INA”), and Paragraphs 24A and 24B of the class action settlement agreement in *Flores v. Reno*, Case No. 85-cv-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997) (“*Flores*”), which is binding on Defendants. This Court may grant relief under the habeas corpus statute, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

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**VENUE**

9. Venue is proper with this Court pursuant to 28 U.S.C. § 2241 and 18 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of California, including decisions concerning the current detention of Petitioner. Specifically, Defendant Elicia Smith, who serves as the approval authority for transfer and release decisions pertaining to unaccompanied minors within the Northern California region, maintains a work space in San Francisco. Venue is proper in this Court pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-94 (1973).

**INTRADISTRICT ASSIGNMENT**

10. Pursuant to Civil L. R. 3-2(c), this case should be assigned to the San Francisco Division of this Court because the action arises in the City and County of San Francisco.

**PARTIES**

11. Plaintiff Ilsa Saravia, the next friend of A.H., is the mother of A.H. and is filing this complaint and petition on A.H.'s behalf, she also seeks injunctive relief on her own behalf as to the Fourth Claim for Relief only. Plaintiff resides in Amityville, Suffolk County (Long Island), New York. Plaintiff has been awarded sole custody of A.H. by the State of New York and is dedicated to A.H.'s best interests.

12. A.H. is a seventeen year old unaccompanied immigrant child, a citizen of Honduras, who until June 12, 2017 resided with his mother on Long Island, but is currently imprisoned by Defendants in a secure detention facility in Yolo County, California, in the custody of ORR. As such, he is in custody under color of the authority of the United States, and he is in custody in violation of the Constitution or laws of the United States, within the meaning of 28 U.S.C. § 2241.

13. Defendant Jefferson B. Sessions is the Attorney General of the United States, responsible for the enforcement of the nation's immigration laws. He is sued solely in his official capacity.

1           14. Defendant James McHenry is the Acting Director of the United States Executive  
2 Office for Immigration Review (“EOIR”), the agency within the United States Department of  
3 Justice that is responsible for the adjudication of immigration cases. He is sued solely in his  
4 official capacity.

5           15. Defendant Thomas E. Price, M.D. is the Secretary of the Department of Health  
6 and Human Services (“HHS”) of the United States, the federal agency upon whose orders A.H. is  
7 detained. He is sued solely in his official capacity.

8           16. Defendant Steven Wagner is the Acting Assistant Secretary of the Administration  
9 for Children and Families. The Administration for Children and Families is an office within HHS  
10 that has responsibility for ORR, the agency that is directly responsible for the detention of A.H.  
11 He is sued solely in his official capacity.

12           17. Defendant Scott Lloyd is the Director of ORR. He is sued solely in his official  
13 capacity.

14           18. Defendant Elicia Smith is a Federal Field Specialist for ORR, who serves as the  
15 approval authority for the transfer and release of unaccompanied children within the geographic  
16 region of Northern California. She works in the field and maintains a work space in San  
17 Francisco, California. She is sued solely in her official capacity.

18           19. Brent Cardall is the Chief Probation Officer of Yolo County. Upon information  
19 and belief, Defendant Cardall is responsible for providing care and custody to unaccompanied  
20 minor children through a contract with ORR.

#### 21           **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

##### 22           **A.H. is Present in the U.S. as an Unaccompanied Alien Child**

23           20. After suffering severe abuse and neglect from his father in Honduras, A.H. fled  
24 Honduras and entered the United States as an unaccompanied minor on or about April 26, 2015.  
25 He was detained by U.S. Customs and Border Protection upon his arrival, and placed in the  
26 custody of ORR, an office within the Administration for Children and Families (“ACF”) of the  
27

1 U.S. Department of Health and Human Services (“HHS”), and the agency responsible for the  
2 care and custody of unaccompanied immigrant children in the United States. See 6 U.S.C.  
3 § 279(a). Upon his arrival, A.H. spent one month in ORR custody at Lincoln Hall in New York  
4 before being released to the custody of his mother, Plaintiff Saravia, on or about May 28, 2015.  
5 Plaintiff signed a sponsor agreement with ORR and became A.H.’s official sponsor.

6 21. For over two years, between May 28, 2015 and June 12, 2017, A.H. lived with  
7 Plaintiff, his mother and sponsor, in Massapequa, New York. By order of the New York State  
8 Family Court for Nassau County dated January 29, 2016, Plaintiff was awarded sole residential  
9 and legal custody of A.H.

10 **A.H. is Pursuing SIJ Status, to which He is Entitled**

11 22. Under the provisions of the William Wilberforce Trafficking Victims Protection  
12 Reauthorization Act of 2008 (“TVPRA”), Pub. L. 110-457, 122 Stat. 5044 (2008), A.H. is  
13 eligible to apply for SIJ status upon the issuance by an appropriate state court of an order  
14 (commonly referred to as a “Predicate Order”) finding that (1) he is a dependent of the court; (2)  
15 he cannot be reunited with one parent due to abuse, abandonment and/or neglect; and (3) it is not  
16 in his best interest to return to his home country. 8 U.S.C. § 1101(a)(27)(J). A.H. qualifies for  
17 the issuance of the Predicate Order. Once the Predicate Order is issued, A.H. can file a Special  
18 Immigrant Juvenile Status Petition (U.S. Citizenship and Immigration Services Form I-360), he  
19 can obtain lawful permanent residency and a path to citizenship, and he can be protected from  
20 removal from the United States.

21 23. On or about January 3, 2017, through his New York attorney, Ms. Gibbs, A.H.  
22 filed a Motion for Special Findings in the Family Court in Nassau County, requesting that the  
23 Family Court issue a Predicate Order containing the findings required under the TVPRA.

24 24. The next hearing in the Family Court matter is currently scheduled to take place  
25 on July 6, 2017 at 9:00 a.m. in Westbury, New York. A.H. had planned to be present and to  
26 testify on his own behalf in order to establish the conditions that would enable the Court to issue  
27 the Predicate Order.

1           25.     A.H. is also the subject of removal proceedings under 8 U.S.C. § 1226(a) in  
2 Immigration Court in New York, New York. He has a Master Calendar hearing in this matter on  
3 July 7, 2017 at 8:30 a.m. Failure of A.H. to appear could result in an order of removal *in*  
4 *absentia*.

5 **A.H. is Arrested, Transported across Country, and Incarcerated in a Secure Facility**

6           26.     On or about June 12, A.H. was arrested outside his home by two plainclothes  
7 officers who identified themselves as Immigration and Customs Enforcement (“ICE”) officers  
8 and said they had an order to arrest him. A.H. asked why the officers were arresting him and they  
9 told A.H. he had admitted to being in a gang, which was untrue. The officers handcuffed him and  
10 transported him to a holding cell. They did not give him an opportunity to gather any belongings  
11 or to communicate with either his mother or his attorney.

12           27.     After about thirty minutes in the holding cell, an officer came into the cell and  
13 A.H. asked to speak with his attorney. The officer did not reply to A.H.’s request.

14           28.     Later, two officers (one who had participated in the arrest and one new officer)  
15 came to the cell and woke A.H., took him to a small room, and began to question him. A.H. said  
16 he would not answer their questions before he could talk to his mother. The officers allowed him  
17 to call his mother, leaving the door to the room open and standing right at the entrance. A.H. told  
18 his mother he had been arrested by ICE and that he might have to pay bond if ordered to do so by  
19 a judge, and asked her to contact his immigration attorneys to let them know he was in ICE  
20 custody. The call lasted about two minutes.

21           29.     After the phone call, the two officers came back into the room. A.H. asked again  
22 to talk to his attorney. The officers said he would be able to talk to his lawyer but that they first  
23 had questions for him. They asked if he was in a gang. He said he was not. They told him he  
24 should not be afraid to tell them he was a member of a gang and that they had a police report that  
25 said he had admitted to being in a gang. A.H. denied all involvement with a gang. The officers  
26 then asked him if he knew anyone who was a gang member. A.H. answered that he did not. The  
27 officers repeated these questions and statements several times and A.H. continually denied being

1 in a gang or knowing gang members. The agents did not allow A.H. to contact his attorney but  
2 they did ask if he wanted to appear before a judge or pay bond. A.H. replied that he would like to  
3 go before a judge. The agents took A.H. back to his cell.

4 30. A short time later, the two agents that had interviewed A.H. retrieved him from  
5 the cell and told him they were taking him to Manhattan. A.H. asked if he would see a judge  
6 there, and they replied yes. The car ride to the Varick Street Processing and Detention Center in  
7 Manhattan took about two hours. Once they arrived, A.H. spent about an hour in an office and  
8 then was put in a cell. A.H. was only wearing sandals with no socks, a t-shirt, shorts, and no  
9 sweater. He was not given a blanket although the cell was cold. There was no bed, so he slept on  
10 a concrete bench.

11 31. At about 3:30 a.m. on Tuesday, June 13, 2017, an officer knocked and woke A.H.  
12 and told him they were leaving. A.H. asked the officer if he was going to see a judge. The officer  
13 said he was. That officer and another put A.H. in a car and drove about an hour to the airport.  
14 Realizing he was at the airport, A.H. asked the officers where he was going and said, "I'm not  
15 going to see my judge?" The officers told him he was going to Los Angeles and would see a  
16 judge then.

17 32. The officers accompanied A.H. on a flight to Los Angeles, California. When they  
18 arrived in Los Angeles, the officers told A.H. he was going to get onto another flight to  
19 Sacramento. A.H. again inquired and was assured that he was going to see a judge in  
20 Sacramento.

21 33. When they arrived in Sacramento, on Tuesday, June 13, 2017, A.H. asked again if  
22 they were going to see a judge. The agents responded yes, but first they were going to a  
23 children's home ("casa hogar"). They proceeded to take him to the Yolo Juvenile Detention  
24 Facility in Woodland, California, where he has been imprisoned ever since.

25 34. Yolo is one of only two "secure care facilities" used by ORR to house  
26 unaccompanied immigrant children and provides the most restrictive setting possible for youth in  
27 ORR custody. A.H. is confined to a locked cell with a metal door for much of the day. Even



1 during recreational time and meals, A.H. is required to request permission before standing up to  
 2 get a drink of water or go to the bathroom. Although A.H. was eventually permitted to place calls  
 3 to his New York attorney from Yolo, such calls are only permitted after 2:00 p.m., which  
 4 corresponds to 5:00 p.m., the end of the work day in the Eastern Time Zone where his New York  
 5 attorney is located.

6 **A.H.'s Incarceration is Utterly Devoid of Reason or Due Process**

7 35. During the time of his initial detention and transportation across country, A.H.'s  
 8 mother and his New York attorney repeatedly requested of Defendants and their agents  
 9 information concerning A.H.'s location, condition, and the reasons he had been detained.  
 10 Defendants did not even confirm that they had arrested A.H. until the day after his arrest; and  
 11 even then, they provided no information as to A.H.'s whereabouts.

12 36. At approximately 5:00 p.m. on Tuesday, June 13, 2017, Ms. Gibbs, A.H.'s New  
 13 York attorney, together with Lenni Benson, a professor at New York Law School, telephoned  
 14 James De La Cruz, an official of ORR, and asked for information about A.H.'s whereabouts. Mr.  
 15 De La Cruz informed Ms. Gibbs and Professor Benson that A.H. was "en route" to Yolo  
 16 Detention Center, but did not provide information about who had decided to send him there or  
 17 why A.H. had been taken into custody. He said A.H. would be subjected to a determination  
 18 whether his detention in a secure facility would be maintained—a process that he said usually  
 19 takes 32 days.

20 37. Ms. Gibbs informed Mr. De La Cruz that A.H. has pending proceedings in state  
 21 court and Immigration Court, and requested that Mr. De La Cruz stop the transfer. Mr. De La  
 22 Cruz told Ms. Gibbs that he could not intervene and that the transfer was already in process.

23 38. Soon after this telephone call, Ms. Gibbs sent an email demand to Mr. De La  
 24 Cruz, demanding, among other things, that Mr. De La Cruz (1) inform her of the exact location  
 25 of her client and where he was being taken; (2) inform his own staff not to remove A.H. from  
 26 New York State; and (3) inform A.H. in English and Spanish that he should not consent to any  
 27 interview or questioning until counsel could be present.

1           39.     During the telephone call, Mr. De La Cruz also directed Ms. Gibbs to a  
2 publication entitled “ORR Guide: Children Entering the United States Unaccompanied” (ORR  
3 Guide) which, among other things, describes ORR placement criteria for unaccompanied  
4 children. The ORR Guide is available at: [https://www.acf.hhs.gov/orr/resource/children-](https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied)  
5 [entering-the-united-states-unaccompanied](https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied).  
6

7           40.     The ORR Guide sets forth criteria regarding placement in a “secure facility” that  
8 manifestly do not apply to A.H. ORR only places an unaccompanied alien child in a secure  
9 facility if the child (1) poses a danger to self or others, or (2) has been charged with having  
10 committed a criminal offense. ORR may not base placement in a secure facility under the latter  
11 criterion if the offenses charged were “isolated offenses that (1) were not within a pattern or  
12 practice of criminal activity and (2) did not involve violence against a person, or the use or  
13 carrying of a weapon,” or were “petty offenses which are not considered grounds for a stricter  
14 means of detention ....”

15           41.     A.H. does not meet any of the criteria for detention in a secure facility. During his  
16 time in the United States, A.H. has had two minor brushes with law enforcement, neither of  
17 which resulted in a conviction of any offense. In April or May 2016, a classmate alleged that  
18 A.H. had threatened him with a knife. Although A.H. was charged with “menacing with a  
19 weapon,” the charges were later adjourned in contemplation of dismissal. In March 2017, A.H.  
20 was charged with fifth degree marijuana possession, the lowest possible possession offense. This  
21 charge, too, was adjourned in contemplation of dismissal. Under New York criminal law,  
22 adjournment in contemplation of dismissal is a final adjudication that does not involve either an  
23 admission or a finding of guilt, and therefore should not be treated as a “conviction” that carries  
24 adverse immigration consequences.

25           42.     Plaintiff is informed and believes, and on that basis alleges, that Defendants  
26 arrested A.H. and placed him in a highly restrictive “secure facility” in order to make a dramatic  
27 public show of force as part of a claimed “immigration crackdown.” On June 14, 2017, two days

1 after A.H.'s arrest, ICE issued a press release announcing the launch of "Operation Matador" and  
2 the "DHS [Department of Homeland Security] Transnational Organized Crime Initiative" which  
3 was purportedly intended "to combat the proliferation of MS-13 and other transnational criminal  
4 gang activity in the New York City metropolitan area, including Long Island." The full text of  
5 the press release is available at: [https://www.ice.gov/news/releases/operation-matador-nets-39-  
6 ms-13-arrests-last-30-days](https://www.ice.gov/news/releases/operation-matador-nets-39-ms-13-arrests-last-30-days). In the press release, ICE claimed that its efforts had resulted in 45  
7 arrests, including 8 in Nassau County, and that all of the individuals arrested were "confirmed as  
8 gang members or affiliates." According to ICE, "[i]ndividuals are confirmed as gang members if  
9 they admit membership in a gang, have been convicted of violating Title 18 USC 521 or any  
10 other federal or state law criminalizing or imposing civil consequences for gang-related activity,  
11 or if they meet certain other criteria such as having tattoos identifying a specific gang or being  
12 identified as a gang member by a reliable source."

13 43. Based on the foregoing press release, Plaintiff is informed and believes that  
14 Defendants may have counted the arrest of A.H. toward the total of 45 "confirmed gang  
15 members" even though has never been a member of a gang and, to his knowledge, he has never  
16 been "identified as a gang member by a reliable source."

17 44. Moreover, Plaintiff is informed and believes that Defendants arrested A.H. and  
18 placed him in a secure facility based on an improper application of the criteria contained in the  
19 ORR Guide. The ORR Guide was revised on June 12, 2017—the day of A.H.'s arrest as part of a  
20 purported gang suppression effort—to include, as factors for consideration in placing a child in a  
21 secure facility, whether the child "[h]as reported gang involvement or displays gang affiliation  
22 while in care" or [h]as self-disclosed violent criminal history or gang involvement prior to  
23 placement in ORR custody.... However, neither of these criteria applies to A.H. because he  
24 could not have "reported gang involvement or display[ed] gang affiliation while in care" *prior to*  
25 being detained; and he has never "self-disclosed" either "violent criminal history or gang  
26 involvement."  
27

1           45.     ORR has no process by which A.H., his legal custodian, or his counsel can obtain  
2 the evidence upon which ORR relies to detain him in the most restrictive setting available for  
3 children in ORR custody. A.H., his legal custodian, and his counsel have no opportunity to test  
4 this evidence, cross examine the witnesses who may be the source of incriminating information,  
5 or to present the true facts to a neutral decision-maker to determine whether such a great  
6 deprivation of liberty is warranted by a compelling governmental interest.

7           46.     In addition, ORR has recently taken the extraordinary position that  
8 unaccompanied minor children in ORR custody are not entitled to a bond hearing before an  
9 immigration judge.

10          47.     As a result of Defendants' wrongful acts, A.H., a minor who would otherwise be  
11 eligible for SIJ status that would allow him to remain in the United States and gain a path to  
12 citizenship, has been arrested without cause, placed in a secure holding cell 2,500 miles from his  
13 mother and guardian, deprived of access to his counsel, deprived of notice and an opportunity to  
14 be heard on whether he should be detained, and deprived of any consideration of his right to be  
15 released on bond, in violation of due process and federal law. In addition, A.H. now faces a real  
16 threat of being denied the opportunity to participate in legal proceedings that would entitle him  
17 to remain in the United States.

18                   **ADDITIONAL LEGAL FRAMEWORK**

19          48.     As a minor within the custody of ORR, A.H. is protected by the terms of the 1995  
20 consent decree entered by the U.S. District Court for the Central District of California in *Flores*  
21 *v. Reno*, Case No. CV 85-4544-RJK(Px) ("*Flores Decree*"), which sets national standards for  
22 detention, release, and treatment of all such minors. These terms include the availability of  
23 judicial oversight of detention by an Immigration Judge and judicial review of other violations  
24 by any United States District Court. The *Flores Decree* agreement remains valid in its entirety,  
25 and none of the provisions in the Homeland Security Act of 2002 or the TVPRA conflict with  
26 the government's obligations under the *Flores Decree*.

1           49.     The *Flores* Decree and federal immigration laws require that unaccompanied  
2 minors in HHS custody be “promptly placed in the least restrictive setting that is in the best  
3 interest of the child.” The statute requires that “the placement of a child in a secure facility shall  
4 be reviewed, at a minimum, on a monthly basis” and it provides guidelines for the reunification  
5 of minors with family members, including the conducting of home studies. 8 U.S.C.  
6 §§ 1232(c)(2) and (3).

7           50.     The immigration laws further provide that the Secretary of HHS shall ensure, to  
8 the greatest extent practicable, that unaccompanied minors in HHS custody “have counsel to  
9 represent them in legal proceedings” and “[t]o the greatest extent practicable . . . shall make  
10 every effort to utilize the services of pro bono counsel who agree to provide representation to  
11 such children without charge.” 8 U.S.C. § 1232(c)(5).

12           51.     Moreover, under the INA, an alien is guaranteed the right to counsel of the alien’s  
13 own choosing, at no expense to the government, in removal proceedings. 8 U.S.C. § 1362. With  
14 limited exceptions that do not apply here, immigration detainees also have a statutory right to a  
15 bond hearing. 8 U.S.C. § 1226(a).

16                   **INJUNCTIVE AND DECLARATORY RELIEF ALLEGATIONS**

17           52.     Plaintiff repeats and realleges the allegations contained in all preceding  
18 paragraphs as though fully set forth herein.

19           53.     An actual and substantial controversy exists between Plaintiff and Defendants  
20 regarding their respective legal rights and duties. Plaintiff contends that Defendant’s continued  
21 detention of A.H. violates his constitutional and statutory rights as alleged above. Defendants  
22 deny that their conduct violates A.H.’s constitutional and statutory rights and intend to continue  
23 such conduct.

24           54.     Defendants’ conduct as alleged above has caused and, absent injunctive relief or a  
25 writ of habeas corpus, will continue to cause irreparable harm to Plaintiff and A.H. by denying  
26 A.H.’s liberty without due process and by interfering with his access to courts and counsel, as  
27 well as his statutory and contractual rights to be placed in the least restrictive setting that is in his

1 best interest. In the absence of immediate relief, A.H. will continue to be unjustly incarcerated  
2 and will be denied the opportunity to participate in court proceedings that are critical to his  
3 ability to remain in the United States and proceed on a path to citizenship.

4 55. There is no adequate remedy at law for the continuing violations by Defendants of  
5 A.H.'s constitutional and statutory rights.

6 **FIRST CLAIM FOR RELIEF**

7 **Interference with Constitutional Right of Access to the Courts**

8 **First and Fifth Amendments to the U.S. Constitution**

9 56. Plaintiff repeats and realleges the allegations contained in all preceding  
10 paragraphs as though fully set forth herein.

11 57. The First Amendment right to petition the government includes the right to file  
12 civil actions in court that have a reasonable basis in law or fact.

13 58. The Fifth Amendment right to substantive due process also includes the right to  
14 access the courts without undue governmental interference.

15 59. A.H.'s arrest, transportation to a distant location and continuing detention impede  
16 his ability to participate in judicial proceedings, both in Family Court and in Immigration Court,  
17 that are critical to his ability to establish his entitlement to SIJ status, to put him on a path to  
18 citizenship, and to prevent his removal. By interfering with A.H.'s ability to participate in these  
19 proceedings, Defendants have denied, and unless enjoined will continue to deny, his right to  
20 access to the courts guaranteed by the First and Fifth Amendments to the U.S. Constitution.

21 **SECOND CLAIM FOR RELIEF**

22 **Interference with Right to Counsel**

23 **First and Fifth Amendments to the U.S. Constitution,**

24 **INA (8 U.S.C. §§ 1362, 1229a) and TVPRA (8 U.S.C. § 1232)**

25 60. Plaintiff repeats and realleges the allegations contained in all preceding  
26 paragraphs as though fully set forth herein.

27 ///

1           61.     The Due Process Clause of the Fifth Amendment guarantees respondents in  
2 removal proceedings the right to representation by counsel of their choice, at no expense to the  
3 government.

4           62.     Civil litigants, including A.H., have a First Amendment right to be represented  
5 by counsel of their choice free from unreasonable interference with the attorney-client  
6 relationship.

7           63.     A.H. has a statutory right to representation by counsel, at no expense to the  
8 government under the INA. 8 U.S.C. §§ 1362, 1229a(b)(4)(A).

9           64.     Defendant Price has a statutory obligation to ensure A.H.'s access to  
10 representation to the greatest extent practicable under the TVPRA. 8 U.S.C. § 1232(c)(5).

11           65.     By their conduct, Defendants have interfered with and denied, and unless  
12 enjoined will continue to interfere with and deny, A.H.'s access to counsel in violation of his  
13 constitutional and statutory rights.

14                           **THIRD CLAIM FOR RELIEF**

15                           **Deprivation of Liberty without Procedural Due Process**

16                           **Fifth Amendment to the U.S. Constitution and INA, 8 U.S.C. § 1226**

17           66.     Plaintiff repeats and realleges the allegations contained in all preceding  
18 paragraphs as though fully set forth herein.

19           67.     The Fifth Amendment to the U.S. Constitution protects all "persons" from  
20 deprivation of liberty without due process of law.

21           68.     8 U.S.C. § 1226(a) requires that immigration detainees in removal proceedings be  
22 provided access to a bond redetermination hearing before an immigration judge.

23           69.     In violation of this statutory requirement, Defendants, as a matter of policy and  
24 practice, do not allow unaccompanied immigrant children in ORR custody to seek bond before  
25 an immigration judge.

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1 77. A.H. does not meet Defendant's own criteria for placement in a secure care  
2 facility.

3 78. To the extent A.H. meets Defendants' criteria for placement in a secure care  
4 facility, those criteria are so overbroad as to impose liberty restrictions that are not justified by  
5 Defendants' interests.

6 79. Detention of A.H. at Yolo is so unnecessarily restrictive as to be punitive in  
7 nature and therefore violates his right to substantive due process.

8 80. Defendants have denied, and unless enjoined will continue to deny, A.H.'s liberty  
9 in violation of the substantive due process component of the Fifth Amendment.

10 **SIXTH CLAIM FOR RELIEF**

11 **Failure to Place in Least Restrictive Setting Consistent with Child's Best Interests**

12 **TVPRA, 8 U.S.C. § 1232**

13 81. Plaintiff repeats and realleges the allegations contained in all preceding  
14 paragraphs as though fully set forth herein.

15 82. The TVPRA requires that unaccompanied minors in HHS custody be "promptly  
16 placed in the least restrictive setting that is in the best interest of the child," and other protections  
17 to ensure compliance with the "least restrictive setting" standard and family reunification. 8  
18 U.S.C. § 1232(c).

19 83. Defendants' actions have violated, and unless enjoined will continue to violate,  
20 A.H.'s rights under the TVPRA.

21 **SEVENTH CLAIM FOR RELIEF**

22 **Violation of *Flores v. Reno* Consent Decree**

23 84. Plaintiff repeats and realleges the allegations contained in all preceding  
24 paragraphs as though fully set forth herein.

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1           85. Plaintiff seeks the Court's review and an order to remedy violations of A.H.'s  
 2 rights under the *Flores* Decree pursuant to Paragraph 24B, which provides: "[a]ny minor who  
 3 disagrees with the INS's determination to place that minor in a particular type of facility ... may  
 4 seek judicial review in any United States District Court with jurisdiction and venue over the  
 5 matter to challenge that placement determination ...."

6           86. Defendants have violated, and unless enjoined will continue to violate the A.H.'s  
 7 rights under the following paragraphs of the *Flores* Decree:

- 8           a. Paragraph 12A: "Whenever the INS takes a minor into custody, it shall  
 9 expeditiously process the minor and shall provide the minor with a notice of  
 10 rights, including the right to a bond redetermination hearing if applicable."
- 11          b. Paragraph 14: requiring that the Government release a minor to the minor's parent  
 12 unless "the detention of the minor is . . . required either to secure his or her timely  
 13 appearance before the INS or the immigration court, or to ensure the minor's  
 14 safety or that of others."
- 15          c. Paragraph 24A: "A minor in deportation proceedings shall be afforded a bond  
 16 redetermination hearing before an immigration judge in every case . . . ."
- 17          d. Paragraph 27: "No minor who is represented by counsel shall be transferred  
 18 without advance notice to such counsel, except in unusual and compelling  
 19 circumstances such as where the safety of the minor or others is threatened or the  
 20 minor has been determined to be an escape-risk, or where counsel has waived  
 21 such notice . . . ."

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**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for the following relief:

1. A declaration that the arrest, transportation, and detention of A.H. are in violation of A.H.'s First and Fifth Amendment rights, the TVPRA, the INA, and the *Flores* Decree;

2. A declaration that:

a. A.H. is entitled to immediate release by Defendants to the custody of Plaintiff; or, in the alternative,

b. a declaration that A.H. is entitled to be transferred to an ORR facility close to Plaintiffs' home and afforded a prompt hearing in which ORR has the burden of justifying A.H.'s detention and A.H. has the right to be represented by counsel, notice of and access to the evidence on which ORR relies, and an opportunity to cross examine witnesses and present A.H.'s response before a neutral decision maker; or, in the alternative,

c. a declaration that A.H. is entitled to a bond redetermination hearing;

3. A temporary restraining order and a preliminary and permanent injunction ordering Defendants, and all persons acting under their direction:

a. to immediately release A.H. to the custody of Plaintiff; or, in the alternative

b. to transfer A.H. to an ORR facility close to Plaintiffs' home and afford him a prompt hearing in which ORR has the burden of justifying A.H.'s detention and A.H. has the right to be represented by counsel, notice of and access to the evidence on which ORR relies, and an opportunity to cross examine witnesses and present A.H.'s response before a neutral decision maker; or, in the alternative,

c. to conduct a bond redetermination hearing within three (3) court days of the issuance of the injunction;

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1           4.     Attorneys' fees and costs; and

2           5.     For such other and further relief as the Court may deem proper.

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5     Dated: June 22, 2017

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA

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7     By: /s/ Julia Harumi Mass  
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10        Attorneys for Plaintiff  
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